

**REMARKS**

The Final Office Action dated May 16, 2006 has been received and carefully reviewed, wherein the pending claims 1-13 stand rejected. Reconsideration of pending claims 1-13 is respectfully requested in view of the above amendments and the following remarks. Applicants request entry of the above amendments under 37 CFR § 1.116 as presenting the claims in condition for allowance or in better form for consideration on appeal and complying with formal requirements set forth in previous Office Actions, without requiring further searching and without adding new matter.

Applicants in this respect note the Examiner's comments on page 17 of the Office Action regarding the broad interpretation of the term "indicating" previously used in the independent claims with respect to the rate indication messages. Accordingly, independent claims 1 and 11 have been amended above to clarify that the received and transmitted rate indication messages *include* either a channel condition measurement at the receiver or a data rate in order to clarify this aspect of the claims. In addition, claim 1 was amended to address antecedent basis issues in claim 1, whereby the pending claims 1-13 are now believed to be in allowable form, as discussed in greater detail below.

**First set of rejections****I. REJECTION OF CLAIMS 1, 2, 4, 5, 11, AND 12 UNDER 35 U.S.C. § 102**

In a first set of rejections in the current Office Action, claims 1, 2, 4, 5, 11, and 12 were rejected under 35 U.S.C. § 102 as being anticipated by Reed 4,939,731. For at least the following reasons, reconsideration and withdrawal of these claim rejections is respectfully requested. Independent claim 1 has been amended above to recite receiving a rate indication message that *includes* either a channel condition measurement at the receiver or a data rate. Reed neither teaches nor suggests receipt of such a message, wherein the ARQ messages of Reed do not include a channel condition measurement, and do not include a data rate as claimed. Consequently, amended independent claim 1 and dependent claims 2, 4, and 5 are not anticipated by Reed and are believed to be in condition for allowance. The method of independent claim 11 has also been amended above to include transmitting a rate indication message that *includes* either a channel condition measurement at the receiver or a data rate based on a channel condition measurement at the receiver. As previously noted

with respect to claim 1, the Reed reference neither teaches nor fairly suggests transmission of such a message, but instead, describes an ARQ that includes neither. Accordingly, claims 11 and 12 are also not anticipated by Reed, and Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1, 2, 4, 5, 11, and 12 under 35 U.S.C. § 102.

#### **II. REJECTION OF CLAIMS 3 AND 13 UNDER 35 U.S.C. § 103**

The first set of rejections also rejected claims 3 and 13 under 35 U.S.C. § 103 as obvious in view of Reed and Wang 5,838,267. Claim 3 depends from the amended independent claim 1 and claim 13 depends from amended independent claim 11, which were discussed above in connection with the Reed reference. Neither Reed nor Wang teach or fairly suggest receiving or transmitting a rate indication message *including* either a channel condition measurement at the receiver or a data rate based on a channel condition measurement at the receiver as claimed, whereby claims 3 and 13 are non-obvious in view of the proposed combination of these references. Applicants therefore request reconsideration and withdrawal of the rejections of claims 3 and 13 under 35 U.S.C. § 103 for at least this reason.

#### **III. REJECTION OF CLAIMS 6-10 UNDER 35 U.S.C. § 103**

Pending claims 6-10 were rejected under 35 U.S.C. § 103 as obvious in view of Reed in combination with Corke 6,414,938. Claims 6-10 depend from the amended independent claim 1 discussed above in connection with Reed, wherein Reed fails to teach or suggest receiving a rate indication message *including* either a channel condition measurement at the receiver or a data rate based on a channel condition measurement at the receiver. Corke also fails to teach or suggest this element of the claims, and thus the combination with Reed does not obviate claims 6-10. Reconsideration and withdrawal of the rejections of claims 6-10 is therefore requested under 35 U.S.C. § 103.

#### **Second set of rejections**

#### **IV. REJECTION OF CLAIMS 1, 2, 5, 6, 11, AND 12 UNDER 35 U.S.C. § 102**

In a second set of rejections, claims 1, 2, 5, 6, 11, and 12 were rejected under 35 U.S.C. § 102, as being anticipated by Scheibel 6,212,240. By the above amendment to

independent claims 1 and 11, the rejected claims 1, 2, 5, 6, 11, and 12 are now believed to be allowable over Scheibel whereby reconsideration and withdrawal of the rejections thereof is respectfully requested. Similar to the Reed reference cited in the first set of rejections discussed above, Scheibel describes an ARQ system which does not involve receiving or transmitting a rate indication message that includes either a channel condition measurement at the receiver or a data rate based on a channel condition measurement at the receiver as set forth in Applicants' claims. Thus, Scheibel does not anticipate claims 1, 2, 5, 6, 11, and 12 and reconsideration thereof under 35 U.S.C. § 102 is respectfully requested.

**V. REJECTION OF CLAIM 4 UNDER 35 U.S.C. § 103**

Claim 4 was rejected under 35 U.S.C. § 103 as being unpatentable over Reed in view of Scheibel. As discussed above, neither Reed nor Scheibel teach or reasonably suggest receiving a rate indication message including either a channel condition measurement at the receiver or a data rate based on a channel condition measurement at the receiver as set forth in the corresponding independent claim 1 from which claim 4 depends. Thus, the proposed combination of Reed with Scheibel fails to teach or suggest all the elements of claim 4 and Applicants request reconsideration of this claim under 35 U.S.C. § 103.

**VI. REJECTION OF CLAIMS 3 AND 13 UNDER 35 U.S.C. § 103**

Claims 3 and 13 were rejected under 35 U.S.C. § 103 as obvious in view of Scheibel in combination with Wang. As discussed above, neither Scheibel nor Wang teach or reasonably suggest receipt or transmission of a rate indication message including either a channel condition measurement at the receiver or a data rate based on a channel condition measurement at the receiver as claimed. Thus, claims 3 and 13 are patentably distinct from the combination of these references, whereby Applicants request reconsideration and withdrawal of the second set of rejections thereof under 35 U.S.C. § 103.

**VII. REJECTION OF CLAIM 7 UNDER 35 U.S.C. § 103**

Claim 7 was rejected on page 12 of the Office Action as unpatentable over Scheibel in view of Corke 6,414,938 under 35 U.S.C. § 103. Neither Scheibel nor

Corke nor the combination thereof teach or suggest receiving a rate indication message including either a channel condition measurement at the receiver or a data rate based on a channel condition measurement at the receiver as set forth in amended independent claim 1 from which claim 7 depends. Consequently, claim 7 is not rendered obvious by this combination of Scheibel with Corke and reconsideration of this claim is requested under 35 U.S.C. § 103.

#### **VIII. REJECTION OF CLAIMS 8-10 UNDER 35 U.S.C. § 103**

The second set of rejections also rejected claims 8-10 under 35 U.S.C. § 103 as obvious with respect to Scheibel in combination with Kameda 5,940,772. These claims depend from amended independent claim 1, which includes receiving a rate indication message including either a channel condition measurement at the receiver or a data rate based on a channel condition measurement at the receiver. As set forth above, the ARQ system of Scheibel does not teach or suggest the claimed receipt of such a rate indication message. The same is true of Kameda, which also fails to teach or suggest receiving a rate indication message as set forth in claims 8-10. Thus, claims 8-10 are believed to be patentably distinct from the proposed combination of Scheibel with Kameda and Applicants request reconsideration thereof under 35 U.S.C. § 103.

**CONCLUSION**

For at least the above reasons, the currently pending claims are believed to be in condition for allowance and notice thereof is requested.

Should the Examiner feel that a telephone interview would be helpful to facilitate favorable prosecution of the above-identified application, the Examiner is invited to contact the undersigned at the telephone number provided below.

Should any fees be due as a result of the filing of this response, the Commissioner is hereby authorized to charge the Deposit Account Number 06-0308, LUTZ200413.

Respectfully submitted,

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June 9, 2006  
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